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265 NLRB No. 39

D--9459  
Newark, NJ

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HOST SERVICES, INC.

and

Case 22--CA--11574

UNION LOCAL 20408 OF THE UNITED  
WAREHOUSE, INDUSTRIAL AND  
AFFILIATED TRADE EMPLOYEES  
UNION

DECISION AND ORDER

Upon a charge filed on April 21, 1982, by Union Local 20408 of the United Warehouse, Industrial and Affiliated Trade Employees Union, herein called the Union, and duly served on Host Services, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 22, issued a complaint on May 20, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on March 26, 1982, following a Board

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election in Case 22--RC--8213, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about April 5, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On June 1, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On August 16, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on August 19, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 22--RC--8213, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and in its opposition to the Motion for Summary Judgment, Respondent essentially contests the validity of the Union's certification. Although Respondent admits its refusal to bargain, Respondent denies that it thereby violated Section 8(a)(5) and (1) of the Act. Specifically, Respondent contends that the Board erred in overruling its objections to the election, urging that the Board failed adequately to consider the evidence regarding certain of these objections, and that the Board's rulings on certain other objections were incorrect as a matter of law.

Review of the record herein, including the record in Case 22--RC--8213, reveals that in the election conducted on October 22, 1980, there were 84 votes cast for, and 12 votes cast against, the Union. There were three challenged ballots, an insufficient number to affect the results of the election. Respondent filed timely objections to the election alleging, inter alia, that agents of the Union harassed and intimidated voters on the day of the election, that the Union improperly promised employees direct benefits of union membership including health insurance, that the Union circulated false and misleading statements about Respondent to employees during the days prior to the election, and that Board agents failed to properly supervise the election. Following an investigation, the Acting Regional Director on December 23, 1980, issued his report on the

objections and a notice of hearing, finding that Respondent's Objection 10 revealed substantial and material issues of fact which could best be resolved by a hearing, but that the other objections should be overruled in their entirety. Thereafter, Respondent filed timely exceptions to the Acting Regional Director's report. In its Decision and Order Directing Hearing <sup>2</sup> dated May 11, 1981, the Board adopted the Acting Regional Director's findings and recommendations. However, on June 1, 1981, Respondent filed with the Board a motion for reconsideration of the Decision and Order. The Board, on June 12, 1981, issued an "Order Granting Motion and Amending Order Directing Hearing" instructing the designated Hearing Officer to receive evidence to resolve the issues raised by Respondent's Objection 5 in addition to those raised by Objection 10. After the hearing, the Hearing Officer recommended that Respondent's objections be overruled and the election not be set aside. On March 26, 1982,<sup>3</sup> the Board adopted the Hearing Officer's report, and certified the Union. It thus appears that Respondent is attempting to raise herein issues which were raised and determined in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section

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<sup>2</sup> Not reported in volumes of Board Decisions.

<sup>3</sup> Board's Decision and Certification of Representative not reported in volumes of Board Decisions.

8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.<sup>4</sup>

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

#### Findings of Fact

##### I. The Business of Respondent

Respondent is, and has been at all times material herein, a Delaware corporation, with an office and place of business located in Newark, New Jersey, where it is engaged in providing restaurant and other food services. During the preceding 12 months, Respondent, in the course and conduct of its business, derived gross revenue in excess of \$500,000. Additionally, during the preceding 12 months, Respondent, in the course and conduct of its business, purchased and received at its Newark, New Jersey,

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<sup>4</sup> See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

facility products, goods, and materials valued in excess of \$50,000, directly from points outside the State of New Jersey.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. The Labor Organization Involved

Union Local 20408 of the United Warehouse, Industrial and Affiliated Trade Employees Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. The Unfair Labor Practices

### A. The Representation Proceeding

#### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All culinary, production, service and maintenance employees employed at Respondent's Newark International Airport, Newark, New Jersey locations, but excluding all office clerical employees, professional employees, confidential employees, managers, guards and supervisors as defined in the Act.

#### 2. The certification

On October 22, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 22, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on March 26, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about March 29, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about April 5, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since April 5, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several

States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

#### Conclusions of Law

1. Host Services, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.



2. Union Local 20408 of the United Warehouse, Industrial and Affiliated Trade Employees Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All culinary, production, service and maintenance employees employed at Respondent's Newark International Airport, Newark, New Jersey, locations, but excluding all office clerical employees, professional employees, confidential employees, managers, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since March 26, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about April 5, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Host Services, Inc., Newark, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Union Local 20408 of the United Warehouse, Industrial and Affiliated Trade Employees Union as the exclusive bargaining representative of its employees in the following appropriate unit:

All culinary, production, service and maintenance employees employed at Respondent's Newark International Airport, Newark, New Jersey locations, but excluding all office clerical employees, professional employees, confidential employees, managers, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and,

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Host Services, Inc., Newark, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Union Local 20408 of the United Warehouse, Industrial and Affiliated Trade Employees Union as the exclusive bargaining representative of its employees in the following appropriate unit:

All culinary, production, service and maintenance employees employed at Respondent's Newark International Airport, Newark, New Jersey locations, but excluding all office clerical employees, professional employees, confidential employees, managers, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and,

if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facilities located in Newark, New Jersey, copies of the attached notice marked "'Appendix.'"<sup>5</sup> Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

November 2, 1982

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John H. Fanning,                      Member

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Howard Jenkins, Jr.,              Member

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Don A. Zimmerman,                  Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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<sup>5</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Union Local 20408 of the United Warehouse, Industrial and Affiliated Trade Employees Union, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All culinary, production, service and maintenance employees employed at our Newark International Airport, Newark, New Jersey locations, but excluding all office clerical employees, professional employees, confidential employees, managers, guards and supervisors as defined in the Act.

HOST SERVICES, INC.

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(Employer)

Dated ----- By -----  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Peter D. Rodino Jr. Federal Building, Room 1600, 970 Broad Street, Newark, New Jersey 07102, Telephone 201--645--3652.